



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 230519-0135]

RIN 0648-BF90

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Amendment to the Atlantic Pelagic Longline Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is amending the regulations implementing the Atlantic Pelagic Longline Take Reduction Plan (hereinafter called the PLTRP or the Plan) to reduce mortality and serious injury of short-finned pilot whales (*Globicephala macrorhynchus*) incidental to the Atlantic portion of the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery (hereinafter called Atlantic pelagic longline fishery) to meet the long-term goal of the Plan as required by the Marine Mammal Protection Act (MMPA). The amendments to the PLTRP are based on consensus recommendations submitted by the Atlantic Pelagic Longline Take Reduction Team (hereinafter called the PLTRT or the Team) and include both regulatory and non-regulatory management measures. Additionally, NMFS is removing Risso's dolphins (*Grampus griseus*) and long-finned pilot whales (*Globicephala melas melas*) from the purpose and scope of the Plan.

DATES: This final rule is effective July 6, 2023, except for the amendment to 50 CFR 229.36(d), in instruction number 4, which is effective July 8, 2024. (see

SUPPLEMENTARY INFORMATION for more details).

ADDRESSES: Public comments and other supporting materials are available at *www.regulations.gov* identified by docket number NOAA-NMFS-2016-0105.

Background documents for the PLTRP can be downloaded from the Pelagic Longline Take Reduction Plan website: *<https://www.fisheries.noaa.gov/national/marine-mammal-protection/pelagic-longline-take-reduction-plan>*.

FOR FURTHER INFORMATION, CONTACT: Erin Fougères, NMFS, Southeast Region, at 727-824-5312 or *erin.fougeres@noaa.gov*, Kara Shervanick, NMFS, Southeast Region, at 727-824-5350 or *kara.shervanick@noaa.gov*, or Kristy Long, NMFS, Office of Protected Resources at 206-526-4792 or *kristy.long@noaa.gov*.

Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 118(f) of the MMPA requires NMFS to develop and implement take reduction plans to assist in the recovery of, or prevent the depletion of, each strategic marine mammal stock that interacts with Category I or II fisheries. Category I fisheries are fisheries that have frequent incidental mortality and serious injury of marine mammals, and Category II fisheries are fisheries that have occasional incidental mortality and serious injury of marine mammals. The MMPA also provides NMFS discretion to develop and implement a take reduction plan for any other marine mammal stocks that interact with a Category I fishery, which the agency determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

The MMPA defines a strategic stock as a marine mammal stock: (1) for which the level of direct human-caused mortality exceeds the potential biological removal

(PBR) level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as threatened or endangered under the ESA, or is designated as a depleted species under the MMPA (16 U.S.C. 1362(19)). The PBR level is the maximum number of animals, not including natural mortalities, which can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level (50 CFR 229.2).

In accordance with section 118(f) of the MMPA (16 U.S.C 1387), the immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to levels less than the PBR level for the stock. The long-term goal of a take reduction plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing to insignificant levels approaching a zero mortality and serious injury rate (*i.e.*, insignificance threshold or zero mortality rate goal), which is 10 percent of the PBR level for a marine mammal stock (69 FR 43338, July 20, 2004). The long-term goal takes into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The MMPA also requires NMFS to amend take reduction plans and implementing regulations as needed to meet these requirements and goals.

History of the PLTRT

NMFS announced the establishment of the PLTRT on June 22, 2005, in the **Federal Register** (70 FR 36120). Four professionally-facilitated meetings and two full-team conference calls were held between June 2005 and May 2006. The PLTRT reached consensus at the May 2006 meeting, and on June 8, 2006, submitted to NMFS a Draft PLTRP, including recommendations for take reduction measures, as well as research

needs and other non-regulatory measures (PLTRT, 2006). Based on the Draft PLTRP, NMFS published a proposed rule (73 FR 35623, June 24, 2008) and a final rule (74 FR 23349, May 19, 2009) implementing the PLTRP, which became effective on June 18, 2009 (50 CFR 229.36).

The existing regulatory measures in the PLTRP, include (1) the Cape Hatteras Special Research Area (CHSRA) in the Mid-Atlantic Bight (MAB) with special observer and research participation requirements for fishermen operating in that area; (2) a 20 nmi (37.04 km) limit on mainline length for all Atlantic pelagic longline sets within the U.S. exclusive economic zone (EEZ) portion of the MAB; and (3) a requirement that an informational placard regarding marine mammal handling/release guidelines be posted inside the wheelhouse and on the working deck of all Atlantic pelagic longline vessels operating in the EEZ off the U.S. east coast.

Since implementation of the PLTRP, the Team has continued to monitor the effectiveness of the Plan and review recent research relevant to the PLTRT and new scientific information on updated estimates of abundance and mortality and serious injury for pilot whales and Risso's dolphins. NMFS convened two professionally-facilitated in-person meetings (August 2012 and December 2015) and six webinars/conference calls (September 2010, June 2014, March 2015, September 2016, October 2016, and September 2019). During the 2015 and 2016 meetings, the discussions and ultimately the consensus recommendations were focused on reducing mortality and serious injury of the Western North Atlantic stock of short-finned pilot whales. The PLTRP has not yet met its long-term goal of effectively reducing short-finned pilot whale mortality and serious injury incidental to the Atlantic pelagic longline fishery to below the insignificance threshold of 10 percent of the PBR level.

The proposed rule to amend the PLTRP was published on December 15, 2020 (85 FR 81168). NMFS received 16 public comments. Additional background information is

provided in the proposed rule and is not repeated here.

Components of the PLTRP Amendment

As described below, this amendment to the PLTRP includes the following regulatory components: (1) removes Risso's dolphins (*Grampus griseus*) and long-finned pilot whales (*Globicephala melas melas*) from the Plan's purpose and scope (2) removes the CHSRA and its special observer and research participation requirements, (3) modifies the current mainline length restrictions in the U.S. Atlantic EEZ portion of the Mid-Atlantic Bight (MAB) statistical area, and (4) implements terminal gear requirements in the U.S. Atlantic EEZ.

The amendment also includes two non-regulatory measures of the PLTRP: (1) convening a safe handling and release work group to update protocols for marine mammal interactions in the Atlantic pelagic longline fishery, and (2) updating observer protocols and fishery observer data forms to increase information collected from marine mammal interaction and depredation events in the Atlantic pelagic longline fishery. The other requirements (*e.g.*, posting the Marine Mammal Handling and Release Placard in the wheelhouse and on deck) of the original PLTRP remain unchanged. The requirements of the PLTRP apply to the owner or operator of any vessel that has been issued or is required to be issued an Atlantic Highly Migratory Species (HMS) tunas, swordfish, or shark permit under 50 CFR 635.4 and that has onboard pelagic longline gear as defined at 50 CFR 635.2 in the EEZ (as defined in 50 CFR 600.10).

Removing Risso's Dolphins and Long-Finned Pilot Whales from the Plan's Purpose and Scope

The long-term goal of a take reduction plan is to reduce the incidental mortality or serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate (*i.e.*, insignificance threshold or zero mortality rate goal), which is

defined as 10 percent of the PBR level for a marine mammal stock (69 FR 43338, July 20, 2004).

Based on data from 2015 through 2019, PBR for the western North Atlantic stock of Risso's dolphins was 301 and average annual mortality and serious injury incidental to the Atlantic pelagic longline fishery was 5.0 (Coefficient of Variation, or CV=0.44; Hayes *et al.*, 2022). Thus, the average annual mortality and serious injury incidental to the Atlantic pelagic longline fishery is 1.7 percent of the stock's PBR level. Based on data from 2015 through 2019, PBR for the western North Atlantic stock of long-finned pilot whales was 306 and the average annual mortality and serious injury incidental to the Atlantic pelagic longline fishery was 1.5 long-finned pilot whales (CV=0.49; Hayes *et al.*, 2022). Thus, the average annual mortality and serious injury incidental to the Atlantic pelagic longline fishery is 0.5 percent of the stock's PBR level.

For both Risso's dolphins and long-finned pilot whales, mortality and serious injury incidental to the pelagic longline fishery is currently below, and has been below, the insignificance threshold since the Plan's implementation. Therefore, NMFS is removing these stocks from the purpose and scope of the Plan.

Removing the Cape Hatteras Special Research Area

This amendment removes the CHSRA, along with its special observer and research participation requirements, which includes a call-in requirement for vessels to provide at least 48 hours advance notice before fishing with pelagic longline gear in that area. NMFS created this regulation initially with the goal of encouraging partnerships between fishermen and researchers in that area. However, NMFS has not used the special observer and research participation requirements to place an observer on a vessel in the CHSRA since the regulations were implemented. Instead, researchers and fishermen have partnered independent of the regulations for research in that area. Therefore, NMFS is removing the CHSRA and associated requirements because it is not needed.

Modifying the Mid-Atlantic Bight Mainline Length Restrictions

This amendment modifies the current 20 nmi (37.04 km) mainline length restrictions at 50 CFR 229.36(e) so that vessels in the EEZ portion of the MAB may set no more than one mainline in the water at any one time, not to exceed 32 nmi (59.26 km), subject to the following specifications: (1) there may be no more than 30 nmi (55.56 km) total of active gear (gear with leaders or hooks) deployed along the mainline, (2) a single section of active gear may not exceed 20 nmi (37.04 km), and (3) a section of active gear must be separated from other sections of active gear along the mainline by a gap without leaders or hooks (*i.e.*, hookless line “interrupt”) of at least 1 nmi (1.85 km).

Implementing Terminal Gear Requirements

This amendment also implements terminal gear requirements in the U.S. Atlantic EEZ as part of the PLTRP. The intent of the terminal gear requirements is to enable hooks to straighten before leaders break, because interactions with marine mammals are less likely to result in a serious injury when hooks straighten and whales can self-release after a hooking event. The terminal gear requirements include: (1) circle hooks must have a round wire diameter not to exceed 4.05 mm (0.159 in) if the hooks are size 16/0, or 4.40 mm (0.173 in) if the hooks are size 18/0, and must have a straightening force not to exceed 300 lb (136.08 kg), and (2) monofilament leaders and branch lines (*i.e.*, gangions) must have a minimum diameter of 1.8 mm (0.071 in) and a breaking strength of at least 300 lb (136.08 kg). These requirements would apply to the EEZ portions of the Northeast Coastal (NEC), MAB, South Atlantic Bight (SAB), and Florida East Coast (FEC) pelagic longline statistical areas, which together compose the entirety of the U.S. Atlantic EEZ (east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico as defined in 50 CFR 600.105(c)).

New Non-Regulatory Components

The non-regulatory components added to the PLTRP in this amendment include:

1. Convening a safe handling and release work group to develop potential updates to the current safe handling and release protocols for marine mammal interactions in the Atlantic pelagic longline fishery. The work group would include PLTRT members, commercial fishermen, marine mammal health and disentanglement experts, and others with expertise and knowledge related to handling marine mammals and/or pelagic longline fishing practices.

2. Updating observer protocols and fishery observer data forms to increase information collected from marine mammal interaction and depredation events in the Atlantic pelagic longline fishery.

Compliance and Enforcement Monitoring

The current PLTRP Monitoring Strategy (NMFS, 2013) is a comprehensive plan that describes the methods for monitoring regulatory compliance and the effectiveness of the PLTRP. Compliance monitoring includes enforcement activities, research, collection of observer data, evaluation of self-reported fishing information, and education and outreach efforts. Effectiveness monitoring examines whether the long-term statutory goals described in the MMPA (*i.e.*, to reduce incidental mortality and serious injury of short-finned pilot whales to a level approaching the stock's insignificance threshold) are being achieved.

NMFS intends to update the monitoring strategy to reflect the new regulatory and non-regulatory components of the PLTRP. In addition, although Risso's dolphins and long-finned pilot whales are being removed from the Plan, NMFS will continue to monitor their mortality and serious injury incidental to the Atlantic pelagic longline fishery.

Comments and Responses

We published a proposed rule in the **Federal Register** on December 15, 2020 (85 FR 81168) and requested comments and information from the public. During the 60-day

comment period, we received 16 comments from the Marine Mammal Commission (Commission), Oceana, a joint letter from Whale and Dolphin Conservation and Defenders of Wildlife (WDC and DOW), Blue Water Fishermen's Association (BWFA), Blue Water Fishing and Tackle Co., American Sword and Tuna Harvesters (ASTH) and five of their members, and 6 private citizens. Only comments relevant to the proposed rule were included below. All comments can be found at:

<https://www.regulations.gov/document/NOAA-NMFS-2016-0105-0003/comment>.

Comment responses below are arranged in the following order: general comments, including whether it would be helpful to the regulated community to further clarify the statistical area definitions in the regulatory text in the final rule, comments on removing long-finned pilot whales and Risso's dolphin from the PLTRP, comments on removing the CHSRA, comments on changes to mainline length restrictions, and lastly, comments on implementing terminal gear regulations.

General Comments

Comment 1: Five commenters (one member of the public, Blue Water Fishing Tackle Co., BWFA, Oceana, and the Commission) expressed general support for the entire proposed rule. Other commenters expressed their support for different aspects of the proposed rule. Two members of the public expressed support for removing Risso's dolphins and long-finned pilot whales from the PLTRP. One member of the public and BWFA expressed support for removing the CHSRA, while WDC and DOW stated that they did not oppose the removal of the CHSRA. Four members of the public and BWFA expressed support for both the mainline length and terminal gear requirements in the proposed rule. The Commission, WDC, and DOW expressed support for the terminal gear modifications and WDC and DOW stated that they did not oppose the mainline length restrictions. One member of the public and WDC and DOW expressed support for the non-regulatory recommendations in the proposed rule.

Response: We acknowledge and appreciate the support.

Comment 2: One member of the public acknowledged the trend of interactions has been declining, but suggested the regulatory and non-regulatory provisions in the proposed rule, particularly those related to terminal gear, do not go far enough and that additional provisions should be made to ensure that the Plan's long-term goal will be met in a timely manner.

Response: NMFS is amending the PLTRP in accordance with section 118(f) of the MMPA to reduce incidental mortality and serious injury of marine mammals incidental to commercial fishing to insignificant levels approaching a zero mortality and serious injury rate (*i.e.*, insignificance threshold or zero mortality rate goal), which is defined as 10 percent of the PBR level for a marine mammal stock (69 FR 43338, July 20, 2004). We will continue monitoring the effectiveness of the regulations after implementation to ensure the long-term goals of the plan are being met and will address future changes to the regulations, in coordination with the PLTRT, if needed.

Comment 3: One member of the public urged NMFS to reconvene the PLTRT prior to finalizing the proposed rule to “receive its advice on additional or alternative measures submitted by agencies, groups, and individuals in response to this proposed action as well as any further changes NMFS may itself deem warranted.”

Response: NMFS convened the Team on February 10, 2021, during the public comment period of the proposed rule. The Key Outcomes Memo for this meeting can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/pelagic-longline-take-reduction-plan>.

Comment 4: The ASTH stated their opposition to most of the proposals contained within the proposed rule, including removal of the CHSRA, mainline length restrictions, and terminal gear requirements.

Response: We acknowledge the opposition. The regulatory and non-regulatory measures in the rule are the result of deliberations and consensus recommendations by the multi-stakeholder PLTRT in accordance with section 118(f) of the MMPA. NMFS will be monitoring the effectiveness of the regulations after implementation to ensure the goals of the plan are being met and will address future changes to the regulations, in coordination with the PLTRT, if needed.

Comment 5: The Commission, WDC, and DOW were concerned about the delay in rulemaking between the PLTRT's consensus recommendations and the publication of the proposed rule. Furthermore, WDC and DOW questioned why the non-regulatory recommendations were not accomplished prior to the proposed rule.

Response: We acknowledge the commenters' concerns. In this instance, the delays associated with this rule reflected the need to prioritize other legally-mandated, complex regulatory actions, including those associated with statutory and court-ordered deadlines, with limited available resources.

Comment 6: WDC and DOW recommended that NMFS report back to the Team on the outcome of the Safe Handling and Release Work Group and the effectiveness of any updated safe handling and release techniques. They also recommended that NMFS report back to the Team on the progress and effectiveness of the updated observer protocols.

Response: We acknowledge the commenters' recommendation and will update the PLTRT as appropriate.

Comment 7: WDC and DOW expressed concern about the suspension of mandatory observer coverage in 2020 due to the COVID-19 pandemic and inquired about the Agency's plan to account for the loss of data and whether there was a process by which data can be accurately extrapolated for marine mammal Stock Assessment Reports (SARs), accounting for COVID restrictions on observer data collection.

Response: In 2020, NMFS observers in the Pelagic Observer Program recorded 379 pelagic longline sets, which is an overall fishery coverage of 9 percent and in 2021, 415 pelagic longline sets were recorded, which is an overall fishery coverage of 9.7 percent. These coverage levels exceed the 8 percent observer coverage requirement under the May 2020 Biological Opinion for the pelagic longline fishery, suggesting that overall coverage was not impacted by the COVID restrictions. In the event that observer coverage for specific areas and quarters was impacted by the COVID restrictions, there are already methods in place that account for undersampling. For area-quarter strata that are not sampled or are poorly represented due to limited observer coverage, average bycatch rates from the prior 5 years of observations are used to estimate total bycatch. NMFS will evaluate the representativeness of observer data and take appropriate steps to reduce biases in bycatch estimation on an ongoing basis.

Comment 8: One member of the public commented that this proposed rule should have been the subject of an Environmental Impact Statement (EIS) instead of an Environmental Assessment (EA).

Response: The commenter did not provide any specific supporting details for this comment. Under the National Environmental Policy Act, a Federal agency may prepare an EA to determine whether a Federal action has the potential to cause significant environmental effects. If the agency determines that the action will not have significant environmental impacts, the agency will issue a Finding of No Significant Impact (FONSI). A FONSI is a document that presents the reasons why the agency has concluded that there are no significant environmental impacts projected to occur upon implementation of the action. If the EA determines that the environmental impacts of a proposed Federal action will be significant, an Environmental Impact Statement is prepared. In the case of this rulemaking, our EA led to the conclusion that the action will not have significant environmental impacts and a FONSI was prepared and an EIS was

not required. The commenter did not identify any specific deficiencies in the Agency's draft EA.

Comment 9: BWFA noted that the PBR and mortality and serious injury data presented in the proposed rule for short-finned pilot whales may not be the most recent available, as more recent data were presented at the PLTRT's September 18, 2020 meeting. They requested that the most recent data be used in the final rule.

Response: We considered the most recent final SAR for short-finned pilot whales in preparation of the final rule, but because the mortality and serious injury estimates not notably different from the mortality and serious injury estimates used in the proposed rule, and remained well over PBR, we did not update the EA. At the time that the proposed rule was drafted, the most recent data available was from the 2018 SAR (data years 2012-2016). Since then, the 2019 SAR (data years 2013-2017) and the 2021 SAR (data years 2015-2019) for short-finned pilot whales have become available. The mean annual mortality and serious injury incidental to the PLL fishery as noted in the proposed rule (2018 SAR) was 168, or 71 percent of PBR. In the 2019 SAR, the mean annual mortality and serious injury was 160, or 68 percent of PBR, and in the 2021 SAR the mean annual mortality and serious injury is 136, or 58 percent of PBR. As a result, the most recent SAR concludes that the total U.S. fishery-related mortality and serious injury attributed to short-finned pilot whales exceeds 10 percent of the calculated PBR and therefore cannot be considered insignificant and approaching a zero mortality and serious injury rate; therefore, the long-term goal of the PLTRP is not being met.

Comment 10: WDC and DOW noted that they had no specific concerns about clarifying regional statistical area definitions in the regulatory text and encouraged industry input in the development of these clarifications. We did not receive other comments on this issue.

Response: We acknowledge and appreciate WDC and DOW's input. As further discussed below in the **Changes from the Proposed Rule** section, we assessed the proposed rule's regulatory text and determined that the same geographic areas can be more simply described and are therefore changing the text of the area descriptions to facilitate understanding of the rule's area of applicability. Specifically, for the areas other than the MAB, we assert referring to the U.S. Atlantic EEZ (east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico as defined in 50 CFR 600.105(c)) accurately and more clearly identifies the areas subject to the new terminal gear requirements.

Comment 11: One member of the ASTH commented that the rule would have significant impacts on their small business, but did not provide additional supporting information. They also expressed concerns about the process to coordinate our finding with the Small Business Administration (SBA) before making a final decision on this regulatory action.

Response: We appreciate the opportunity to clarify several issues raised in this comment. We certified to the Chief Counsel for Advocacy of the SBA that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Chief Counsel for Advocacy of the SBA did not provide any comments on the proposed rule or on the adequacy of our assessment of impacts on small entities.

An estimated 88 pelagic longline vessels owned by 76 small businesses would be directly affected by this rule. They represent approximately 36 percent of the 248 permitted pelagic longline vessels and 214 small businesses in the pelagic longline fleet. Removing the CHSRA call-in requirement and requiring minimum gangion size and strength, combined, are expected to have little to no additional economic impacts. Modifying the mainline length requirements would cause a change in the amount of active gear deployed within the MAB ranging from a 0.7 percent decrease to a 4.8

percent increase. Assuming a constant one-to-one correspondence between the length of active gear and dockside revenue, there would be a corresponding change in dockside revenue from highly migratory species harvested from the MAB ranging from a 0.7 percent reduction to a 4.8 percent increase. When dockside revenues from highly migratory species harvested from all east coast fishing areas are included, the percentages of the net reduction or net gain decline significantly. Requiring particular hook strengths could slightly increase the annual hook cost of 88 pelagic longline vessels that fish on the east coast by \$60 to \$75 per vessel, which represents from 0.07 percent to 0.08 percent of annual trip costs.

No changes to this final rule were made in response to public comments and there were no significant changes to the fishery between the proposed and final rule. As a result, a final regulatory flexibility analysis was not required and none was prepared.

Removing Species from the Purpose and Scope of the Plan

Comment 12: Two members of the public disagreed with removing Risso's dolphins or long-finned pilot whales from the PLTRP because their distribution overlaps with pelagic longline fishing and there is limited information available on the species' migration and movement patterns and insufficient information to reliably calculate abundance and, therefore, PBR.

Response: We acknowledge the commenters' concerns, and provide further clarification. Although the ranges of Risso's dolphins and long-finned pilot whales overlap with the fishery, observer data show that since the PLTRP was implemented, the mortality and serious injury of both species remains below 10 percent of PBR, thus meeting the long-term goal of the PLTRP in accordance with section 118(f) of the MMPA.

Comment 13: Two commenters requested that NMFS continue to monitor Risso's dolphin and long-finned pilot whale serious injury and mortality even though they will be removed from the Plan.

Response: We agree and will continue to closely monitor mortality and serious injury for these and other marine mammal species through our annual stock assessment and pelagic longline bycatch reports.

Removing the CHSRA

Comment 14: Three members of the public, the ASTH, and one ASTH member expressed opposition to removing the CHSRA, asking why NMFS would remove it if it is an important area for pilot whales and could impair future research.

Response: We acknowledge the concerns and appreciate the opportunity to clarify several issues raised in these comments. Removing the CHSRA will not impair future research opportunities. In order to deploy or fish with pelagic longline gear in the CHSRA, the regulations required fishermen to call NMFS Southeast Fisheries Science Center at least 48 hours, but no more than 96 hours, prior to embarking on the fishing trip to see if they must take a special observer to conduct scientific investigations in support of PLTRP implementation (50 CFR 229.36(d)). This requirement was in addition to any existing observer coverage requirements under the Pelagic Observer Program. However, NMFS has not used the special observer and research participation requirements to place an observer on a vessel in the CHSRA since the regulations were implemented. Instead, researchers and fishermen have voluntarily partnered independent of the regulations for research in that area. Because the CHSRA is not currently an area prohibited to fishing, the removal of the CHSRA's special observer and research participation requirements is not expected to impact bycatch rates of pilot whales, as no other restrictions on fishing activities are specifically associated with the area.

Comment 15: WDC and DOW commented on the importance of observer data throughout the fishery given the removal of the CHSRA.

Response: We agree that collecting observer data throughout the fishery is an important component in monitoring the effectiveness of the PLTRP. Because the CHSRA was a special requirement in addition to the overall monitoring of the fishery by the Pelagic Observer Program, removing the CHSRA is not expected to impact observer data or resulting bycatch estimates.

Mainline Length Restriction

Comment 16: Three commenters had questions and/or concerns about standardization and enforcement of mainline length restrictions and the lack of clarity in the rule as to how these will be addressed. Additionally, two commenters noted the importance of monitoring the effectiveness of the mainline measure.

Response: NMFS will work closely with its Office of Law Enforcement, the U.S. Coast Guard, and state enforcement agents to ensure effective enforcement of the regulations described in this final rule, including mainline length limitations. To protect the integrity and effectiveness of an enforcement plan, specific details concerning law enforcement tactics, techniques, and procedures will not be made public. Furthermore, NMFS will be updating the monitoring plan and will be evaluating the effectiveness of the new measures as data become available.

Comment 17: The ASTH and two of their members expressed opposition to the mainline requirement that prohibits setting multiple mainline sets, noting that multi-sets were a common practice and can decrease soak time.

Response: The 20 nmi (37.04 km) mainline length restriction in the EEZ portion of the MAB was originally developed because, at the time, data suggested that pilot whale interaction rates were twice as high in pelagic longline sets with total mainline lengths greater than 20 nmi (37.04 km) than for pelagic longline sets with total mainline

lengths less than 20 nmi (37.04 km). Operators of individual fishing vessels were allowed to fish multiple mainline sets at one time to “compensate” for the reduction of hooks due to the reduced maximum mainline length of 20 nautical miles (PLTRT, 2006). Based on Team discussions, we presumed that less than 50 percent of fishing vessels in the MAB would set multiple mainlines to compensate for the reduced maximum mainline length. Beginning in 2013, however, fishing vessels in the MAB shifted from deploying mostly single mainline sets to also setting multiple mainlines in the water at one time (hereinafter referred to as “multi-sets”) (PLTRT, 2015). From 1992 to 2012, multiple mainlines set as part of a multi-set represented 1 percent of all mainlines observed on pelagic longline fishing vessels in the Mid-Atlantic Bight, but increased to 47 percent from 2013 to 2015 (PLTRT, 2015). Analyses showed that the rate of pilot whales interactions were higher in multi-sets compared to single mainline sets and that pelagic longline multi-sets had longer soak durations than a similar length single mainline set (PLTRT, 2015). In light of this information, the Team recommended that NMFS increase the maximum mainline length from 20 nmi (37.04 km) to 32 nmi (59.26 km) (with some restrictions), but limit vessels to a single mainline in the water at any one time to limit the total length of active gear in the water and reduce soak duration (PLTRT, 2016).

Comment 18: Several members of the ASTH commented on the impact this rule would have on vessels who are using a deep set longline technique, as this technique uses a longer mainline and more hooks to reach depth.

Response: The current regulations prohibit commercial vessels from deploying a pelagic mainline that exceeds 20 nmi (37.04 km) in length in the MAB (50 CFR 229.36(e)), unless authorized to do so for research purposes. This rule increases the maximum length of mainline in the MAB from 20 nmi (37.94 km) to 32 nmi (59.26 km). This rule applies to the owner or operator of any vessel that has been issued or is required to be issued an Atlantic HMS tunas, swordfish, or shark permit under 50 CFR 635.4 and

that has onboard pelagic longline gear as defined at 50 CFR 635.2 in the EEZ (as defined in 50 CFR 600.10). At this time, Atlantic pelagic longline vessels using the deep set fishing technique are considered to be part of the pelagic longline fishery and are, therefore, subject to this rule. If those vessels are considered active then they were considered in the economic analysis. However, because this fishing technique is relatively new in this fishery, there are limited data on how, when, and where this type of fishing occurs. As such, any data from vessels using this technique were treated the same as data from a standard pelagic longline vessel for the mainline length analysis. We will update the Team as new information on this fishing technique becomes available.

Comment 19: The ASTH and two of their members commented how the analysis of the economic impacts does not take into account the adverse impact on vessels and small businesses that are presently deploying more than 32 nmi (59.26 km) of mainline, such as those deploying mainline that is 45 or 50 nmi in length.

Response: The regulations prohibit commercial vessels from deploying a pelagic mainline that exceeds 20 nmi (37.04 km) in length in the MAB (50 CFR 229.36(e)), unless authorized to do so for research purposes. This rule increases the maximum length of mainline in the MAB from 20 nmi (37.94 km) to 32 nmi (59.26 km), and is, therefore, expected to generate an economic benefit. We did not analyze the economic impacts of vessels fishing in the MAB deploying more than 20 nmi of mainline length along a single mainline because it exceeds the legal limit.

Mainline lengths are not currently regulated outside of the MAB, and this rule does not change that. Vessels fishing longer mainlines, such as 45 or 50 nmi, outside the MAB may continue to do so and experience no economic impacts. As a result, no changes to the economic analysis were made in response to public comments and there were no significant changes to the fishery requiring modifications to the economic analysis.

Terminal Gear Requirements

Comment 20: In the proposed rule, NMFS sought comments on the length of time necessary to implement the terminal gear regulations. Three commenters addressed the length of time needed for manufacturers and industry to implement the new terminal gear requirements. WDC and DOW noted that manufacturers may need time to produce new hooks, but were concerned about additional delays to implementing regulations. BWFA and Blue Water Fishing and Tackle Co. suggested that at least 1 full year would be needed to plan and implement the hook design and inventory changes that would be needed, but recommended that the fishery be given no less than 18 months following the publication of the final rule to implement the new hook requirements in order to work through existing inventories of hooks that would not meet the new regulatory requirements.

Response: We acknowledge these comments and to meet the competing conservation needs for the species and economic needs of the pelagic longline industry, we are delaying implementation of the new terminal gear requirements for 1 year from the effective date of the final rule.

Comment 21: In the proposed rule, NMFS sought comments on whether the proposed strength for gangions is sufficient for ensuring that the proposed hooks will straighten before the gangion breaks. BWFA and Blue Water Fishing and Tackle Co. provided information in support of the proposed strengths and noted that the test of a leader is generally a minimum strength, which means a 300 lb (136.08 kg) leader would likely require more than 300 lb before breaking, and that the leaders are changed out regularly to avoid having them degrade and weaken over time through use. In contrast, the Commission, Oceana, and one member of the public provided comments indicating that the proposed breaking strengths would be insufficient.

Response: We acknowledge and appreciate the information provided by the commenters. Based on these comments, we did not change the proposed strength for

gangions (*i.e.*, leaders or branch lines) or hooks. Additionally, we will update the monitoring plan and evaluate the effectiveness of the new terminal gear requirements as data become available.

Comment 22: The Commission commented that it does not support the use of 18/0 hooks and recommended that “NMFS select and implement the ‘hooks’ sub-action of alternative 3” and strike 18/0 from the regulatory text.

Response: We acknowledge the Commission's comment. When the PLTRT developed this consensus recommendation in 2015, discussion focused on hook types, with Team members drawing on a combination of NMFS Southeast Fisheries Science Center analysis, weak hook study (C. Bergmann) and hook testing (McLellan *et al.*, 2014 and McLellan unpublished data) to identify hooks more likely to straighten under the force of a hooked pilot whale, which included 18/0 circle hooks with a 4.40 mm (0.173 in) wire diameter (PLTRT, 2015). Once the terminal gear requirements go into effect, we will monitor the use of such gear to determine whether there is any difference between the marine mammal bycatch on 16/0 and 18/0 hooks and reevaluate in the future with the Team, as needed.

Comment 23: Oceana, WDC, DOW, and one member of the public commented on the importance of monitoring the effectiveness of the terminal gear requirements, including collecting and analyzing data on straightened hooks, bare leaders, and updating the observer information collected. Additionally, a member of the public encouraged NMFS to have fishery observers collect straightened hooks in order to try to genetically identify the species involved in the straightening.

Response: NMFS agrees with the importance of monitoring the effectiveness of these requirements. We will update the monitoring plan and evaluate the effectiveness of the new measures as data becomes available. Additionally, one of the non-regulatory components of the Plan is to update observer protocols and fishery observer forms to

increase information collected from marine mammal interaction and depredation events in the Atlantic pelagic longline fishery.

Comment 24: Several members of the ASTH expressed opposition to the terminal gear requirements because they think they will lose target catch and commented that the adverse economic impact would be similar to the adverse economic impact of the weak-hook requirement in the Gulf of Mexico.

Response: The weak hooks required by this final rule in the Atlantic EEZ are not the same as those required in the Gulf of Mexico. The hooks required by this final rule are stronger than the ones required in the Gulf of Mexico and are currently used by pelagic longline fishermen in the area. Additionally, NMFS will update the monitoring plan and will evaluate the effectiveness of the new terminal requirements as data become available.

Changes from the Proposed Rule

In the proposed rule, NMFS solicited comments on several items: (1) whether the proposed strength for gangions is sufficient for ensuring that the proposed hooks will straighten before the gangion breaks, (2) the length of time necessary for hook manufacturers to produce and supply hooks that meet the new specifications as well as the length of time the industry would need to implement the use of hooks and gangions that meet new specifications in the fishery and (3) the clarity of the manner in which four fishing areas (Northeast Coast, Mid-Atlantic Bight, South Atlantic Bight, and Florida East Coast) are defined, as well as the consistency of the definitions. As described below, as a result of the comments received on the third question, NMFS is making changes to the proposed rule. Additionally, as a result of comments received on the second question, NMFS is delaying implementation of the terminal gear requirements. NMFS is not making other changes as a result of the public comments summarized earlier but has made clarifying changes as needed throughout the regulatory text.

Terminal Gear Strength

NMFS requested comments regarding whether the proposed strength for gangions (at least 300 lb (136.08 kg), based on manufacturer specifications when new) is sufficient for ensuring that the proposed hooks (with a straightening force not to exceed 300 lb based on manufacturer's specifications when new and a diameter not to exceed 4.05 mm (0.159 in) for size 16/0 hooks or 4.40 mm (0.173 in) for size 18/0 hooks) will straighten before the gangion (*i.e.*, leaders or branch lines) breaks, thereby allowing a short-finned pilot whale to self-release. We received comments from industry indicating that (a) the test of a gangion is generally a minimum strength, which means a 300 lb leader would likely require more than 300 lbs before breaking, and (b) the leaders are changed out regularly, and therefore are unlikely to degrade and weaken over time through use. Based on these comments, NMFS did not change the terminal gear requirements from the proposed rule. However, in line with comments from stakeholders, NMFS will continue to monitor the effectiveness of this requirement and reassess with the Team at a future meeting.

Delayed Implementation of Terminal Gear Requirements

NMFS requested comments concerning the length of time necessary for hook manufacturers to produce and supply hooks that meet the new specifications as well as the length of time the industry would need to implement the use of hooks and gangions that meet new specifications in the fishery.

Based on comments received from industry that they would need at least 12 months to comply with the new specifications, NMFS delayed implementation of the terminal gear requirements by 1 year, commencing 30 days after the date of publication of this rule, in effect allowing 13 months for production and supply of hooks that meet the final rule specifications. NMFS also notes that there are available hooks that meet the specifications of the final rule currently used by the fleet. In line with comments from

industry stakeholders, NMFS will monitor for any supply chain issues associated with this requirement during the delayed implementation period.

Clarification of Where Terminal Gear Regulations Apply

The proposed rule defined three new fishing areas (NEC, SAB and FEC), in addition to the MAB, in order to identify where the terminal gear requirements would apply. NMFS requested comments regarding the clarity of the manner in which the areas are defined, as well as the consistency of the definitions.

To simplify the regulations, NMFS is changing the manner in which it describes where the terminal gear requirements apply, though the geographic scope of these requirements is unchanged. The proposed rule defined three new areas that are widely known to the pelagic longline fishery because they are statistical reporting areas depicted on maps, but are not currently defined in regulations. The NEC, SAB and FEC areas, along with the MAB area, are equivalent to the U.S. Atlantic EEZ (east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico as defined in 50 CFR 600.105(c)). Therefore, NMFS is clarifying the regulatory text for enforcement purposes that the terminal gear requirements apply to the entire U.S. Atlantic EEZ (east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico as defined in 50 CFR 600.105(c)) and is removing the proposed definitions for the NEC, SAB, FEC areas from the final rule.

Furthermore, for enforcement purposes, NMFS is clarifying the definition of the MAB (where the mainline length restrictions apply) by using specific references to the latitude and longitude coordinates to identify the area. NMFS is not changing the geographic scope of the MAB area.

Classification

An Environmental Assessment has been prepared, analyzing the impacts on the human environment that would result from this action and determining that the action

will not have significant environmental impacts upon implementation of the action. A copy of the EA is available from NMFS (see **ADDRESSES**).

This rule has been determined to be not significant for purposes of Executive Order 12866.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting or recordkeeping compliance requirements are introduced in this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. While NMFS received several public comments on the economic effects of weak hooks and mainline length requirements, no changes to this final rule were made in response to public comments and there were no significant changes to the fishery between the proposed and final rule. As a result, a final regulatory flexibility analysis was not required and none was prepared.

References

A complete list of all references cited in this final rule, along with other supporting documents can be found in the Federal eRulemaking Portal at www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2016-0105 and is available upon request from the NMFS Southeast Regional Office in St. Petersburg, FL (see **ADDRESSES**).

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Pelagic
Longline.

Dated: May 22, 2023.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

**PART 229--AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE
MARINE MAMMAL PROTECTION ACT OF 1972**

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Effective July 6, 2023, in § 229.3, revise paragraphs (t) and (u) to read as
follows:

§ 229.3 Prohibitions.

* * * * *

(t) It is prohibited to deploy or fish with pelagic longline gear (as defined in 50 CFR 635.2) in the EEZ (as defined in 50 CFR 600.10) of the Atlantic Ocean east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico (as defined in 50 CFR 600.105(c)), unless the vessel complies with the requirements specified in § 229.36(c) and (d).

(u) It is prohibited to deploy or fish with pelagic longline gear (as defined in 50 CFR 635.2) in the Mid-Atlantic Bight (as defined in § 229.36(b)(2)) unless the vessel complies with paragraph (t) of this section and the requirements specified in § 229.36(e).

* * * * *

3. Effective July 6, 2023, in § 229.36:

- a. Revise paragraphs (a) and (b)(1) and (2);
- b. Remove paragraphs (b)(3) and (4);
- c. Remove and reserve paragraph (d); and
- d. Revise paragraph (e).

The revisions read as follows:

§ 229.36 Atlantic Pelagic Longline Take Reduction Plan (PLTRP).

(a) *Purpose and scope.* The purpose of this section is to implement the PLTRP to reduce incidental mortality and serious injury of short-finned pilot whales in the Atlantic pelagic longline fishery off the U.S. East Coast, a component of the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery. The requirements in this section apply to the owner or operator of any vessel that has been issued or is required to be issued an Atlantic HMS tunas, swordfish, or shark permit (under 50 CFR 635.4) and that has onboard pelagic longline gear (as defined at 50 CFR 635.2) in the EEZ (as defined in 50 CFR 600.10) of the Atlantic Ocean east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico (as defined in 50 CFR 600.105(c)).

(b) * * *

(1) *Active gear* means mainline in the water with gangions (as defined in 50 CFR 635.2) or hooks attached.

(2) *Mid-Atlantic Bight* means the area bounded by rhumb lines connecting the following points: 43°N 77°W; 43° N 71°W; 35°N 71°W; 35°N 77°W; and 43°N 77°W.

* * * * *

(e) *Mainline gear restrictions.* Vessels operating in the portion of the Mid-Atlantic Bight in the EEZ (as defined in 50 CFR 600.10) may not deploy pelagic longline gear unless the gear meets the following mainline specifications:

(1) *Mainline setting*. There can only be one piece of mainline in the water at any time. If the gear breaks or parts after setting, the vessel owner or operator must make every effort to remove the additional portions of the gear as soon as possible.

(2) *Mainline length*. Mainline length cannot exceed 32 nmi.

(3) *Active gear*. There can be no more than 30 nmi of active gear.

(4) *Maximum active gear length*. A section of active gear cannot exceed 20 nmi.

(5) *Gaps*. Between any two parts of active gear, there must be a gap of at least 1 nmi.

4. Effective July 8, 2024, in § 229.36, add paragraph (d) to read as follows:

§ 229.36 Atlantic Pelagic Longline Take Reduction Plan (PLTRP).

* * * * *

(d) *Hook and gangion requirements*. Vessels operating in the EEZ (as defined in 50 CFR 600.10) of the Atlantic Ocean east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico (as defined in 50 CFR 600.105(c)) can only possess, use, and deploy hooks and gangions that meet the following specifications:

(1) *Hooks*. The hook shank must be constructed of corrodible round wire stock that can be measured with a caliper or other appropriate gauge and meet the following specifications:

(i) A 16/0 circle hook must not exceed 4.05 mm (0.159 in) in diameter and straighten with a force not to exceed 300 lb (136.08 kg), based on manufacturer specifications when new.

(ii) A 18/0 circle hook must not exceed 4.40 mm (0.173 in) in diameter and straighten with a force not to exceed 300 lb (136.08 kg), based on manufacturer specifications when new.

(2) *Gangions*. Any gangion (as defined in § 635.2 of this title), must meet all of the following specifications:

(i) Made of monofilament nylon. No other line material (*e.g.*, wire) may be used; however, crimps and chafing gear are allowed.

(ii) Have a diameter of 1.8 mm (0.071 in) or larger.

(iii) Have a breaking strength of at least 300 lb, based on manufacturer specifications when new.

(3) *Exception for transit.* If pelagic longline gear is appropriately stowed, a vessel may transit through the EEZ of the Atlantic Ocean east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico (as defined in 50 CFR 600.105(c)) without meeting the gear requirements specified in this paragraph. For the purpose of this paragraph, transit means non-stop progression through an area without any fishing activity occurring. Longline gear is stowed appropriately if all gangions and hooks are disconnected from the mainline and are stowed on or below deck, hooks are not baited, and all buoys and weights are disconnected from the mainline and drum (buoys may remain on deck).

(4) *Exception for research.* No person may possess, use, or deploy hooks other than what is described in this section unless they have a written letter of authorization on board from the Southeast Regional Administrator to conduct scientific or gear research for reducing bycatch in the pelagic longline fishery. In order to obtain a written letter of authorization, the research must be consistent with the regulations at 50 CFR part 635 and be designed to:

(i) Advance the long-term goal of reducing mortality and serious injury of short-finned pilot whales in the Atlantic pelagic longline fishery to insignificant levels approaching a zero mortality and serious injury rate; or,

(ii) Reduce the bycatch of other listed, threatened, or protected species in the Atlantic pelagic longline fishery.

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